

Consumer Action

116 New Montgomery Street, Suite 233
San Francisco, CA 94105
(415) 777-9648

Southern California Office
523 West Sixth Street, Suite 1224
Los Angeles, CA 90014
(213) 624-8327

VIA FEDERAL EXPRESS

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October 26, 1994

William F. Caton
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Order On Reconsideration and Further Notice of Proposed Rule Making
(CC Docket No. 93-22).

Dear Mr. Caton:

Enclosed please find the original and 9 copies of Consumer Action's reply
Comments in the above-referenced proceeding.

Should any questions arise in connection with this matter, please contact me
at (415) 777-9648.

Very truly yours,



Ken McEldowney
Executive Director

Enclosures

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0 of 9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policies and Rules Implementing) CC Docket No. 93-22
the Telephone Disclosure and Dispute)
Resolution Act)

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CONSUMER ACTION'S REPLY COMMENTS ON THE
ORDER ON RECONSIDERATION
AND
FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: August 2, 1994

Released: August 31, 1994

Consumer Action (CA) welcomes the opportunity to comment on the opening comments of other parties on the Federal Communications Commission's Order on Reconsideration and Further Notice of Proposed Rule Making (Docket No. 93-22).

We support the Commission's proposed rules as necessary to protect consumers. In fact, after review of opening comments by other parties it is clear to us that the proposed rules do not go far enough.

What has troubled us the most since the introduction of 900 numbers is the ability of the pay-per-call scam artists to keep one step ahead of regulatory efforts. No sooner were regulations tightened up on 900 lines, then they migrated to collect calls, international calls, 800 numbers and so-called "calling cards."

The opening comments of Southwestern Bell and BellSouth very clearly point up the extent of this problem and the need for further action by either the Commission or Congress.

supported written presubscription agreements for 800 number information services but argued that “a written presubscription agreement be a prerequisite for all interstate or international information services (other than directory services, information services accessed via the 900 prefix or those services billed to a commercial credit card).” (P. 3)

As the two regional phone companies spelled out quite clearly, the pay-per-call consumer abuse problem is not one that will lend itself to an easy solution. Consumer Action believes that any effective solution must involve a ban on pay-per-call information services on 800 and POTS numbers.

Pay-per-call information services belong on 900 numbers. Consumer safeguards are in place for 900 numbers. These safeguards are impossible to impose on information services accessed through 800 or POTS.

The United States Telephone Association recognized this problem, arguing that there is no reason to maintain a presubscription exception to the rule that pay-per-call services should not be permitted on 800 numbers. “The Commission should eliminate the exception so that the rules are clear to the public: all calls made using 800 numbers are ‘free’ and all pay-per-call services using 900 numbers will carry the expectation that the customer will pay a charge.” (P. 5)

Several of the parties submitting opening briefs argued that the Commission had gone too far with its regulations:

- AT&T

AT&T recommended that the Commission not exclude calling cards as a permissible means of paying for information provider services. (P. 10) We urge the Commission to reject this suggestion. The Commission’s proposed rule would close a major loophole in the existing regulations.

The creation of so-called “calling cards” by long distance companies in partnership with information providers has provided adult services a very effective way of evading pay-per-call consumer safeguards. CA does not believe that there is

any way to allow calling card access to information services without exposing consumers to fraud. (We have no problem with the billing of information services to credit cards as defined in the proposed regulations.)

- MCI

MCI noted that some carriers are charging very high tariffed rates for calls that are providing information services. MCI argued that the solution to this is “prompt and decisive action against the wrongdoers” by the Commission. (P. 10) This solution is unrealistic given the magnitude of the problem and the limited number of staff available at the Commission. Pay-per-call information services that are billed to a phone bill should only be permitted on 900 numbers.

- SPRINT

Sprint set forth conditions under which it believes common carriers should be permitted to offer pay-per-call services over 800 lines. (P. 3-4) CA fears that there is no way for the Commission to enforce such conditions, with the result that the restrictions would be very easy to ignore for those carriers who saw profit in doing so. As such we would urge that the Commission totally exclude pay-per-call services on 800 lines.

- AMERITECH

Ameritech put its faith in the voluntary guidelines set up by the Interactive Services Association (ISA) in arguing that the Commission’s proposed regulations should be scaled back. It concludes that, “This good faith effort on the part of the industry leads Ameritech to conclude that many of the ‘problems’ of unauthorized access to 800 information services will be ‘resolved’.” (P. 3-4)

However, ISA’s opening comments recognized the limitations of its guidelines, “the ISA and the pay-per-call industry cannot control the inappropriate business practices of the industry’s worst offenders.” CA agrees that voluntary guidelines are not enough. The Commission must approve strong regulations.

CA supports BellSouth in its statement, "Bolder measures, to include a prohibition on use of the 800 SAC for delivery of information services and more vigorous Commission policing of the 'tariffed charge' exception, are needed at a minimum to limit the access of minors to inappropriate programming and to curb the resourcefulness of those who would defraud the public." (P. 2)

BellSouth argued that a complete prohibition of information services on 800 numbers is needed. CA endorses BellSouth's recommendation that the Commission consider further rule making and/or sponsorship of legislation to this end. (P. 7)

BellSouth is also correct in pointing out that the exemption for information services provided at tariffed rates also provides an opportunity for evading the letter and spirit of the Telephone Disclosure and Dispute Resolution Act (TDDRA) and Commission rules. BellSouth correctly called for the elimination of this exemption. (P. 7-9)

The tariffed rate problem exists whether the information provider (often of adult services) is using an international number or entering into a partnership with a long distance company that the consumer reaches through 10XXX access. In both cases, the so-called tariffed rates are high enough to create sizable profits for those companies who seek to evade consumer protections for 900 and 800 numbers.

Southwestern Bell (SWBT) pointed this out quite clearly in the ads it provided as part of its opening comments. (Appendix) Among the ads:

- Global Network Services spoke of its \$1.99-\$3.99 a minute tariffed rates.
- U.S. Network Services advertised \$2.99-\$3.50 a minute rates.
- A VISL Newsletter bragged that it handled a high of 6 million minutes of traffic in June to Hong Kong and claimed that the international audiotext industry was worth in excess of \$800 million last year.

- Northwest Nevada Telco promised a payout of up to \$1.30 a minute for 10658 numbers.

SWBT took a slightly different approach to that of BellSouth in that it

The proposed rules set forth by the Commission are a good first step. Of particular importance are the following:

- Presubscription agreements for 800 pay-per-call services should only be valid if they are in writing and signed by the participating adult in whose name the phone number is billed.

- The calling card option for payment of information service charges on 800 calls should be eliminated.

Given the level of misuse of 800 numbers and so-called “calling cards” the strict proposed rules are warranted. Anything less will fail to close regulatory loopholes that the deceptive information providers have found in the existing 800 number regulations.

We urge the Commission to adopt its proposed rules.

CA also believes that the Commission must take the lead in prohibiting pay-per-call services on 800 numbers, domestic POTS, 10XXX access and international calls. If the Commission can not take such action on its own, we would urge it to support the introduction of enabling legislation in Congress.

If there are isolated pay-per-call services that should not go on 900 lines, then billing should only be by traditional, full service credit cards.

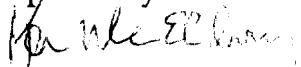
CA recognizes that the strict safeguards it advocates may negatively impact certain legitimate information services. However, we believe that the benefits from such steps clearly justify such action. For consumers, the case is quite clear. For every individual who will find it more difficult to access legitimate information services there will be scores who will no longer be ripped off by deceptive information service providers.

We also believe that legitimate carriers and information providers will benefit in the long run from strong consumer safeguards. Already, scam artists have damaged the reputation of 800 numbers and called into question the willingness and ability of carriers to protect their customers from international and other POTS-

based rip-offs.

We urge the Commission to adopt its proposed rules and take whatever steps are necessary

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ken McEldowney", written over the typed name.

Ken McEldowney
Executive Director
Consumer Action
116 New Montgomery St., Suite 233
San Francisco, CA 94105

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